

Filed 4/8/96

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LARRY J. CULLUM,

Petitioner - Appellant,

v.

PATRICK WHALEN, Warden,

Respondent - Appellee.

No. 95-1526

D. Colorado

(D.C. No. 95-Z-733)

ORDER AND JUDGMENT*

Before **ANDERSON, BARRETT, and LOGAN**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner Larry Cullum, appearing pro se and in forma pauperis, appeals the district court's dismissal, without prejudice, of his 28 U.S.C. § 2241 habeas corpus petition. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

Cullum is currently incarcerated at the Federal Correctional Institution in Florence, Colorado. He brought his habeas corpus petition pursuant to 28 U.S.C. § 2241 alleging his conviction in the Western District of Texas was in violation of the Double Jeopardy clause of the Constitution because his "real estate and mineral properties" were previously subject to civil forfeiture proceedings for the same criminal conduct. The magistrate judge treated his habeas petition as a motion to vacate, pursuant to 28 U.S.C. § 2255, and recommended that Cullum's case be dismissed for lack of subject matter jurisdiction on the ground that the petition should be filed in the court which imposed the sentence, the United States District Court for the Western District of Texas. The district court adopted that recommendation, and dismissed Cullum's petition without prejudice. Cullum appeals that dismissal.

Based upon a review of the pleadings, we conclude that the district court did not err in dismissing the petition on the grounds outlined above. See Carter v. Attorney General, 782 F.2d 138, 141 (10th Cir. 1986); see also Miller v. United States, 564 F.2d 103, 105 (1st Cir. 1977) ("The sentencing court is the designated forum for challenges to the validity of a federal prisoner's conviction or sentence, which are motions authorized by 28 U.S.C. § 2255."), cert. denied, 435 U.S. 931 (1978).

The judgment of the district court is AFFIRMED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge